

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EES 13-01 The Florida Elections Code

SPONSOR(S): Ethics & Elections Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics & Elections Subcommittee		Davison	Marino

SUMMARY ANALYSIS

Section 101.657, F.S., governs early voting during elections in Florida, and s. 101.161, F.S., governs the manner in which the Legislature proposes amendments to the Florida Constitution. The table below summarizes the current law regarding early voting requirements and legislatively proposed ballot summaries, as well as the effects of the proposed changes in the PCB:

ISSUE	CURRENT LAW	EFFECTS OF PROPOSED CHANGES
EARLY VOTING DAYS §101.657	<ul style="list-style-type: none"> 8 days required Begins on the 10th day before and ends on the 3rd day before an election Early voting not permitted on the Sunday before the general election 	<ul style="list-style-type: none"> 8 days minimum, 14 days maximum Begins on the 15th day before and ends on the 2nd day before an election Early voting optional at the supervisor of elections' discretion on the Sunday before the general election
EARLY VOTING HOURS §101.657	<ul style="list-style-type: none"> 48 hours minimum, 96 hours maximum At least 6 but no more than 12 hours per day No 7 a.m. to 7 p.m. restriction No requirement that all sites in a county be open on the same days or for the same amount of time 	<ul style="list-style-type: none"> 48 hours minimum, 168 hours maximum (72 more hours than under current law) At least 6 but no more than 12 hours per day No 7 a.m. to 7 p.m. restriction No requirement that all sites in a county be open on the same days or for the same amount of time
EARLY VOTING SITES §101.657	<p>Early voting may be offered at the following locations:</p> <ul style="list-style-type: none"> City halls Public libraries Main or permanent branch offices of supervisors of elections 	<p>Expands currently authorized sites to include fairgrounds, civic centers, courthouses, county commission buildings, stadiums, and convention centers</p>
LEGISLATIVE BALLOT SUMMARIES §101.161	<ul style="list-style-type: none"> No word limit on summaries Allows multiple summaries in a joint resolution Allows full text of an amendment to be placed on the ballot instead of a summary Attorney General authorized to rewrite a summary if a court invalidates the legislature's summaries 	<ul style="list-style-type: none"> Applies a 75-word limit to the first of multiple summaries in a joint resolution, while any remaining summaries would not be subject to a 75 word limit Applies a 75-word limit to joint resolutions containing only one summary Does not apply a 75-word limit to summaries rewritten by the Attorney General

This PCB does not appear to have a direct fiscal impact on state government, local governments, or private parties.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Early Voting

A. Early Voting Days

Current Situation

Prior to the enactment of CS/CS/HB 1355 in 2011, counties were required to offer between 12 and 14 days of early voting in an election that contained a state or federal race, beginning on the 15th day before an election and ending on the 2nd day before the election.¹ Early voting on the Sunday before the general election was optional at the discretion of the supervisor of elections.

Current law requires 8 days of early voting in an election that contained a state or federal race, beginning on the 10th day before the election and ending on the 3rd day before the election.² Thus, early voting is not allowed on the Sunday before the general election.

Effect of Proposed Changes

This PCB increases the number of days available for early voting by requiring a minimum of 8 days and allowing up to a maximum of 14 days, beginning on the 15th day before an election that contains state or federal races and ending on the 2nd day before the election. Early voting *must* be offered each day from the 10th day before an election that contains state or federal races through the 3rd day before the election. Early voting *may* be offered, at the discretion of each county's supervisor of elections, on the 15th, 14th, 13th, 12th, 11th, or 2nd day before an election that contains state or federal races. As such, early voting on the Sunday before the general election may be offered at the discretion of each county's supervisor of elections, but is not required.

B. Early Voting Hours

Current Situation

Prior to the enactment of CS/CS/HB 1355 in 2011, the law required counties to offer 96 hours of early voting, including 8 hours on each weekday and a total of 8 hours on each weekend during the authorized early voting period.³ Early voting was allowed only between 7 a.m. and 7 p.m., and all early voting sites in a county had to be open on the same days during the same hours.⁴

Currently, early voting must be offered for no less than 6 hours and no more than 12 hours per day, which means that 48 hours of early voting is required but up to 96 hours is allowed at the discretion of each county's supervisor of elections.⁵ The law does not require early voting during specified hours or require all early voting sites in a county to be open on the same days for the same hours.

Effect of Proposed Changes

This PCB increases the number of hours available for early voting by requiring counties to offer early voting for a minimum of 48 hours and allowing early voting for a maximum of 168 hours during the early voting period. Consistent with current law, early voting must be offered for no less than 6 hours and no more than 12 hours per day at each site during the early voting period. However, the PCB does not require early voting during specified hours or require all early voting sites in a county to be open on the same days for the same hours.

C. Early Voting Sites

Current Situation

¹ § 101.657(1)(d), F.S. (2010).

² § 101.657(1)(d), F.S.

³ § 101.657(1)(d), F.S. (2010).

⁴ *Id.*; § 101.657(1)(c), F.S. (2010).

⁵ § 101.657(1)(d), F.S.

Counties are allowed to have early voting at city halls, public libraries, and main or permanent branch offices of supervisors of elections.⁶ In order for a county to utilize a permanent branch office of a supervisor of elections as an early voting site, the office must have been used for at least a year prior to the election as a permanent facility of the supervisor.⁷ These were also the permissible early voting sites before the enactment of CS/CS/HB 1355 in 2011.⁸

Effect of Proposed Changes

This PCB expands the types of sites at which early voting may be held by adding fairgrounds, civic centers, courthouses, county commission buildings, stadiums, and convention centers to the currently permissible early voting sites.

Legislative Ballot Summaries

Current Situation

Florida Constitution

Article XI of the Florida Constitution provides the following methods for amending the State Constitution:

- 1) Joint resolution passed by 3/5 of the membership of each house of the Legislature;
- 2) Initiative petition;
- 3) Proposal by the Constitution Revision Commission;
- 4) Proposal by the Taxation and Budget Reform Commission; or
- 5) Proposal by a constitutional convention.

A proposed amendment to or revision⁹ of the constitution, or any part of it, must be submitted to the electors at the next general election held more than 90 days after the joint resolution or the report of the revision commission, constitutional convention, or taxation and budget reform commission proposing it is filed with the Secretary of State, unless, pursuant to law enacted by 3/4 of the membership of each house of the Legislature and limited to a single amendment, it is submitted at an earlier special election held more than 90 days after such filing.¹⁰

Once during the tenth week, and once during the sixth week immediately preceding the week in which the election is held, each proposed amendment, with notice of the date of the election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.¹¹ The Department of State ensures compliance with this constitutional requirement by overseeing publication of the ballot title, ballot summary, and amendment text in newspapers throughout the state.

Unless otherwise specifically provided for elsewhere in the constitution, if the proposed amendment is approved by a vote of at least 60% of the electors voting on the measure, it is effective as an amendment to the constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.¹²

With respect to joint resolutions of the Legislature proposing an amendment or revision, the constitution does not:

- 1) Contain explicit requirements governing the form or manner in which amendments or revisions proposed by joint resolution appear on the ballot. Specifically, the constitution does not require a joint resolution proposing an amendment or revision to contain a title or ballot summary or limit the length of either, nor does the constitution contain an explicit requirement regarding the accuracy or content of ballot titles, summaries, or the text of proposed amendments;
- 2) Limit the number of proposed amendments or revisions the Legislature may place on a ballot;
- 3) Limit proposed amendments or revisions to a single subject; or
- 4) Otherwise limit the subject matter of a proposed amendment or revision.

⁶ § 101.657(1), F.S.

⁷ *Id.*

⁸ Ch. 2011-40, Laws of Fla.

⁹ An "amendment" amends one section of the constitution, while a "revision" amends one or more articles of the constitution. Art. XI, s. 1, Fla. Const.; "The function of a section amendment is to alter, modify or change the substance of a single section of the Constitution containing particularized statements of organic law...The function of an article revision is to restructure an entire class of governmental powers or rights, such as legislative powers, taxation powers, or individual rights." *Smathers v. Smith*, 338 So. 2d 825, 829 (Fla. 1976).

¹⁰ Art. XI, s. 5(a), Fla. Const.

¹¹ Art. XI, s. 5(d), Fla. Const.

¹² Art. XI, s. 5(e), Fla. Const.

Statutory Requirements

Section 101.161, F.S., establishes requirements regarding the form and manner in which amendments or revisions to the Florida Constitution appear on the ballot. That section requires each joint resolution that proposes a constitutional amendment or revision to include one or more ballot statements in order of priority. Each ballot statement must consist of a ballot title, by which the measure is commonly referred to, not exceeding 15 words in length, and either a ballot summary that describes the chief purpose of the amendment or revision in clear and unambiguous language, or the full text of the amendment or revision. In 2000, after the court invalidated a legislative ballot summary that had been approved by the voters,¹³ the Legislature exempted legislatively proposed ballot summaries from the statutory 75-word limit that currently applies to ballot summaries of constitutional amendments proposed by other methods.¹⁴

Legal challenges to one or more ballot statements in a joint resolution must be filed within 30 days after the joint resolution is filed with the Secretary of State. Unless otherwise provided in the joint resolution, if a court finds that all ballot statements are defective and further appeals are declined, abandoned, or exhausted, the Attorney General must, within 10 days, prepare and submit to the Department of State a revised ballot title or ballot summary that corrects the deficiencies identified by the court. Any legal challenge to a revised ballot title or ballot summary must be filed within 10 days after the revised ballot title or ballot summary is submitted to the Department of State.

A ballot statement that consists of the full text of an amendment or revision must be presumed by a court to be a clear and unambiguous statement of the substance and effect of the amendment or revision, providing fair notice to the electors of the content of the amendment or revision and sufficiently advising electors of the issue upon which they are to vote.

By December 31, 2013, state voting systems must allow for the placement on ballots of the full text of constitutional amendments.¹⁵

Effect of Proposed Changes

The PCB applies a 75-word limit to the first of multiple summaries in a joint resolution, while any remaining summaries are not subject to a 75-word limit. If the joint resolution contains only one ballot summary, that ballot summary is subject to a 75-word limit. The PCB specifies that the 75-word limitation does not apply to any ballot summary revised by the Attorney General to correct deficiencies identified by a court.

B. SECTION DIRECTORY:

Section 1 amends s. 101.161, F.S., specifying the length of certain ballot summaries in joint resolutions of the legislature; specifying that the length of a ballot summary revised by the Attorney General is not limited.

Section 2 amends s. 101.657, F.S., revising the list of permissible sites for early voting; revising the number of days and hours for early voting.

Section 3 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None
2. Expenditures: None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None
2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None

¹³ *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000) (invalidating the amendment after approval by voters).

¹⁴ Ch. 2000-361, Laws of Fla.

¹⁵ § 101.56075, F.S.

D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The mandates provision does not apply to this bill because subsection 18(d) of Article VII, Fla. Const., explicitly exempts election laws from the provision.

2. Other: None

B. RULE-MAKING AUTHORITY: None

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A